

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**SHYANDREA AND MARY
HESTER, et al.,**

Plaintiffs,

V.

**LOWNDES COUNTY
COMMISSION, et al.**

Defendants.

$$\begin{array}{c}) \\) \\) \\) \\) \\) \\) \\) \\) \\) \end{array}$$

) CIVIL ACTION NO. 2:06-cv-0572-WHA-DRB

**REPLY OF LOWNDES COUNTY COMMISSION TO PLAINTIFFS’
RESPONSE TO MOTION TO DISMISS**

COMES NOW Defendant, Lowndes County Commission, and submits this reply to Plaintiffs' response to its Motion to Dismiss. Lowndes County Commission maintains that its Motion to Dismiss is due to be granted in its entirety and that Plaintiffs' Response is without merit. As support thereof, Defendant states as follows:

1. In their response, the Plaintiffs fail to address the merits of the legal arguments presented by Lowndes County in its Motion to Dismiss and supporting brief. The Plaintiffs merely state the legal standard for a complaint to survive a Motion to Dismiss and argue that because of the County Commission's relationship with Emergystat and Deputy Sheriff Harris, the Commission is liable for the alleged deprivation of civil rights.

2. Plaintiffs argue that because the Lowndes County Commission contracted with Emergystat to provide emergency services to its citizens, Emergystat is a state actor pursuant to 42 U.S.C. § 1983. Plaintiffs also appear to argue that because Deputy Sheriff Harris is an “officer of Lowndes County” and acted in “full concert and cooperation” with the Emergystat employee, he is also liable pursuant to 42 U.S.C. § 1983. Plaintiffs’ arguments are flawed. In

making these arguments, Plaintiffs entirely ignore the valid and applicable case law contained in Defendants' brief which establishes that the complaint against Lowndes County Commission is due to be dismissed.

3. The Plaintiffs have not alleged that any member of the representative body of Lowndes County, Alabama participated in any way in the actions that comprise the Plaintiffs' complaint. Plaintiffs ignore the established principal that Lowndes County cannot be held liable for conduct of persons Plaintiffs claim to be employees or agents of the Commission pursuant to *respondeat superior*. Jimmy Harris as a Lowndes County Deputy Sheriff is an employee of the State of Alabama not the Lowndes County Commission. In fact, the Commission lacks a duty or authority to train or supervise employees of the Lowndes County Sheriff's Office. Further, Plaintiff has failed to propose any agency relationship between employees of Emergystat and the Lowndes County Commission. See Bd. of County Comm'rs of Bryan County, Okla. v. Brown, 520 U.S. 397, 403 (1997); Monell v. New York City Dep't of Social Servs., 436 U.S. 658, 692 (1978); McMillian v. Monroe County, Ala., 520 U.S. 781, 793 (1997); Parker v. Amerson, 519 So.2d. 442, 442 (1987); Lockridge v. Etowah County Comm'n, 460 So. 2d 1361, 1363 (Ala.Civ.App. 1984); Ison Logging, L.L.C. v. John Deere Construction Equipment Co. Inc., 2000 WL * 1843833 (S.D.Ala. 2000).

4. In order to hold the Lowndes County Commission liable for constitutional deprivations pursuant to § 1983, Plaintiffs must show that the Commission was the "moving force" behind the violation. See McElligott v. Foley, 182 F.3d 1248, 1259 (11th Cir. 1999) Plaintiffs have wholly failed to demonstrate that, through its deliberate conduct, the Lowndes County Commission was the "moving force" behind the constitutional deprivations alleged. Bd.

of County Comm'rs of Bryan County, Okla. v. Brown, 520 U.S. 397, 404 (1997). Thus, the Lowndes County Commission's Motion to Dismiss is due to be granted in its entirety.

WHEREFORE, PREMISES CONSIDERED, Defendant, Lowndes County, Alabama, commission, requests that this Honorable Court enter an order dismissing all claims against them in this action.

RESPECTFULLY SUBMITTED this 1st day of August, 2006.

s/C. Richard Hill, Jr.

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CERTIFICATE OF SERVICE

I hereby certify that on this the 1st day of August, 2006, I have electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, who will send notification to the following CM/ECF participants:

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